

**IOWAccess Advisory Council Meeting
Minutes of November 8, 2001**

D R A F T

- Present: John Wellman, Herb Strentz, Marsha Ternus, Quent Boyken
- By Phone: Carol French-Johnson, Craig Hiemstra, Jane Ginapp, Marsha Carter, Bob Skow, Richard Neri, Gail Flagel
- Absent: Julie Newby, Corlis Moody, Kelly Hayworth
- Guests: Dan Combs, Diane Van Zante, Glen Dickinson, Larry Murphy, Bill Blue (American Abstract Company), Don Guisinger (American Abstract Company), Jane Ohnemus (Iowa Title Co., Iowa Land Title), Mike St. Clair (legislative lobbyist, Iowa Land Title Association), Chris Hoegh (Marion Co. Title Services, Iowa Land Title Association), Jenny Tyler (Iowa State Bar Association)

Via a roll call, it was determined that there was a quorum of ten voting members present. After the roll was taken, Gail Flagel joined the call, making eleven voting members present.

Carol French-Johnson chaired the meeting. She turned the meeting over to Justice Marsha Ternus. Marsha explained that we were not talking about general public access, as these documents are available for physical viewing at the courthouse. In addition, these documents are available electronically for free. The electronic access we are discussing here involves the convenience of getting information at your desk or at home.

The judicial branch worked on this pilot project with ITD because of a statutory requirement enacted by the legislature. A system was developed that will allow the judicial branch to put court information online which can be accessed for a fee (exactly what they were instructed to do by the legislature). The legislature instructed the judicial branch to conduct a pilot project on a fee-based model. The issue is whether the fee is an appropriate fee. The fee was originally proposed as \$125, but has been dropped to \$25. The \$25 fee is what we are asking approval of, but is not an across the board access fee. Information that we thought the general public or person on the street would check is still free. The fee information has more commercial use and value. It was very difficult to draw the line, but the court believes they have come up with a fair proposal.

Questions/comments from the members:

Bob Skow asked if this is a pilot project or model? Marsha said it is a pilot project. Bob mentioned that a pilot project is usually revisited to see how it is working.

Marsha advised that there will be monitoring from the beginning. Bob asked if we were trying to make this a profit center or pay for the cost as we go. Marsha assured everyone that the fee (\$25) was set at a cost-recovery level. Bob said we need to determine at some point if we are overcharging or undercharging.

Marsha Carter asked about the duration of the pilot project. The legislature said it should go through FY05.

If the \$25 dollar fee does not cover costs, can it be changed within the next couple of years? Marsha advised that if there was a problem with shortfalls, the council would be hearing from the Courts.

Marsha Ternus clarified that all the money goes into the technology account.

Marsha Carter said that she believes the attorneys will recover this cost, as they will charge it back to their clients.

The Courthouse alternative is not changing; this is just a fee for electronic access from the desktop.

Gail Flagel talked about the length of time that someone could subscribe for. Larry Murphy said that it is unlimited. There was some discussion that it should be limited to one year at a time, especially if monthly fees change.

The recommendation before the council is option 1 contained on page 4 of the memo (written by Larry Murphy) that was circulated. A motion was made by Marsha Carter, seconded by Bob Skow, that a vote be taken on option 1. Carol asked if there was any further discussion.

Larry Murphy stated that this isn't a system where you get online and get a copy of a document. It is more milestones, events, etc. Under the fee-based approach, you would have access to judgments, liens, etc.

The customer gets to decide whether to obtain the information for free or to access it online for a fee. As long as the customer has a choice, one of the council members said he didn't see a problem with charging a fee for online access.

Herb Strentz urged that all information that is currently freely available would remain so, regardless of what happens with value-added programs.

Quent Boyken advised that he has been working on this issue for quite some time. He has consistently opposed a fee for public information. However, he commended Larry Murphy for the work that he had done on this proposal. After receiving Larry's memo, Quent contacted the Bar Association. They are uniform in their disagreement because they believe there should not be a fee for access to public information. They

believe that the model implemented by the Secretary of State's Office is the correct one to follow (electronic access to the UCC and corporate database information that is free). He also noted that the states of Missouri and Wisconsin have implemented free electronic access to court information in those states. Quent advised that he would be voting "no" on this proposal.

Jane Ohnemus, representing the Iowa Land Title Association, has been involved in this project for many years, so is well acquainted with it. They use it everyday, a lot. They are here in support of Option 1. They are one of the primary public users. They view this as an enhanced service, so don't have a problem with the fee. They urged that this issue not be deferred. They feel that the General Assembly has directed the Court to do this.

Jenny Tyler, of the Carney Law Firm, representing the Iowa State Bar Association, stated that the Bar Association opposes the concept of a monthly user fee for electronic access to public records and looks at this as a tax on access to public records. There is no rational basis for differential treatment for public records that are stored electronically as opposed to on paper. Electronic access should prove to be a more cost effective method. Access to this information should continue to be paid for by the entire public through general appropriations rather than placing the cost on a select group of users. The proposal is asking the legal community to bear the cost of obtaining information. She mentioned that the memo from Larry Murphy indicates that the Judicial Branch's development costs and on-going service fee paid to ITD equals \$300,000. This would mean the Judicial Branch's costs are covered if 1,000 users subscribe to the fee-based system. She asked if the Judicial Branch would reduce the monthly fee if more than 1000 users subscribe (based on a \$300,000 cost). If part of the \$300,000 cost is development cost, next year, after the capital costs have been paid for, will the records then be made available to the public for free or at a reduced fee? The Iowa State Bar Association urged the council to defer action on this agenda item or alternatively to defeat the proposal.

There is a motion on the floor (originally made by Marsha Carter and seconded by Bob Skow) to recommend to the IT Council that option 1 be adopted as the manner in which to implement access fees to judicial records.

A rollcall vote was taken, with the results being 7 in favor, 4 opposed. The vote went as follows:

In favor: Bob Skow, Richard Neri, Carol French-Johnson, Jane Ginapp, Marsha Carter, Gail Flagel, Marsha Ternus.

Opposed: John Wellman, Craig Hiemstra, Herb Strentz, Quent Boyken.

Quent made a motion that the minutes of this IOWAccess Advisory Council meeting be forwarded to the IT Council for their review. This motion was seconded by Marsha Ternus. A rollcall vote was taken, all voted in favor of the motion.

The meeting was adjourned.